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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,548	01/29/2004	David Layne		3101

David Layne  
125 East 68th Street  
Chicago, IL 60637

7590

09/16/2008

EXAMINER
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BEAUCHAINE, MARK J

ART UNIT	PAPER NUMBER
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3653

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/766,548	<b>Applicant(s)</b> LAYNE, DAVID	
	<b>Examiner</b> MARK J. BEAUCHAINE	<b>Art Unit</b> 3653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3 and 4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The following terms lack sufficient antecedent bases:

Regarding the term "The mounting technique of claim one" (see claim 3 at line 1), note that claim 1 describes a "system" and does not refer to a "mounting technique".

Regarding the terms "a vertically suspended partition panel" (see claim 4 at line 3), "a checkout counter conveyor belt" (see claim 3 at lines 3 and 4) and "a live hinge member" (see claim 3 at line 6), note that these terms are already referred to in claim 1. Thus, they should start with either "the" or "said" instead of "a".

The relationship between the terms "turret member" (see claim 1 at line 5) and "détente augmented turret" (see claim 1 at line 12) is ambiguous because it is unclear whether these elements are the same or if the "turret member" is a part of the "détente

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augmented turret". See also "turret" (claim 4 at lines 2 and 5) as compared to the "detente augmented turret" of claim 1.

The term "far fewer parts over prior art of similar ambition" (see claim 3 at line 7) is ambiguous because it is unclear what number of parts "far fewer parts" refers to and because it is unclear what specific elements the term "prior art of similar ambition" refers to.

The term "narrow base alignment posture" (see claim 3 at line 9) is ambiguous because it is unclear what range of dimension the term refers to.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patent Number 5,933,994 by Misareh ("Misareh") in view of Patent Number 2,650,678 by Newbold ("Newbold"). The mechanized system disclosed by Misareh comprises partition panel 10 that is positioned vertically above a conveyor belt and travels laterally along said belt to separate goods (see Figure 1 and column 1, lines 18-

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27). Misaresh further discloses promotional materials 36 that are mounted on sides 14 of said panel via frame 16 and hatch 40 (see Figure 4).

Misaresh fails to disclose a turret member/linear motion system configuration. Newbold teaches a mechanized system comprising vertically suspended partition panel 25 that interfaces with counter rail 14 (see Figures 2 and 3). Said panel is laterally manipulated via turret member 45 which is attached to anti-friction linear motion system 18 and 19 which is mounted directly atop said counter rail (see Figure 4) for the purpose of separating goods to be purchased by a customer using said system. Furthermore, said panel may be withdrawn by virtue of a live hinge to establish a vertical clearance with purchase items and then returned to its original position (see Figure 3 and 5).

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Misaresh in view of Newbold as applied to claim 1 above, and further in view of Patent Number 662,736 by Prahar ("Prahar"). Misaresh/Newbold fails to disclose said hatch as being hinged. Prahar teaches a panel comprising hinge member panel hatch 12 that is mounted on three-sided frame 10 (see Figure 1) for the purpose of selectively retaining promotional materials within said frame. It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the hatch/frame configuration of Prahar into the panel of Misaresh/Newbold for the purpose of selectively said retaining promotional materials within said panel.

***Response to Arguments***

Applicant's arguments with respect to claims 1-4 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK J. BEAUCHAINE whose telephone number is

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(571)272-6934. The examiner can normally be reached on 8:00AM through 5:00PM Mondays through Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick H. Mackey can be reached on (571)272-6916. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Patrick H. Mackey/  
Supervisory Patent Examiner, Art  
Unit 3653

mjb